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Thursday, July 01, 1999

Ms. D'wana Terry, Chief
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
4th Floor
Washington DC, 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Communication
218-219 MHz Service Rulemaking
WT Docket No. 98-169

Dear Ms. Terry:

As a follow-up to our meeting of June 17, Celtronix Telemetry, Inc. sets forth its position on the issues listed below that are being addressed as part of the 218-219 MHz Service rulemaking proceeding.

1. Anti-trafficking/Disaggregation. It is technically feasible to disaggregate the one-half megahertz of spectrum which comprises a 218-219 MHz Service license, and such disaggregation should be permitted. An issue raised by such disaggregation is whether a lottery licensee should be able to disaggregate and assign, for example, half of its licensed spectrum without being subject to the anti-trafficking rule. After reviewing the NPRM for the 218-219 MHz Service and comments filed in that proceeding, Celtronix concludes that the anti-trafficking rule should apply to any license assignment of a lottery license regardless of whether the license is disaggregated.

The idea that lifting the anti-trafficking rule to permit assignment of an unconstructed, disaggregated license will allow lottery licensees in the top-9 markets to raise capital for buildout has no evidentiary support and, in fact, makes little sense. First, it is based on the false assumption that licensees in the top-9 markets are business entrepreneurs with plans for deploying and developing new services and technologies that utilize the 218-219 MHz spectrum, and only need capital in order to implement those plans. In fact, less than one-third of the 18 licensees in the top-9 markets even bothered to participate in the 218-219 MHz rulemaking proceeding or otherwise inform the Commission about what they have been doing. Lifting the anti-trafficking rule even for disaggregated license assignment will simply be an invitation to these licensees to sell half their licenses and pocket the cash. Attempting to enforce a set of regulations that would require the proceeds from a disaggregated license sale to go toward buildout of the seller's remaining spectrum would be an exercise in futility. What the Commission probably will end up with is one group of speculators (the current top-9 licensees)

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selling disaggregated licenses to another group of speculators who, like the current licensees, generally do nothing but sit and wait for the auction winners to develop the spectrum and deliver a silver platter of applications, financing, management that can be made available for top-9 market systems.

A clear distinction can be drawn between lottery winners and auction licensees that is legally sufficient to subject the former to continued application of the anti-trafficking rules. These two groups are under very different kinds of obligations to the government regarding their licenses. Unlike auction winners, lottery winners have no payment obligations they owe to the government for their licenses. The concern that lottery winners should not profit from the sale of their licenses prior to construction is based on the public interest of preventing speculators from holding private auctions for bare licenses, which deprives the public of the intended benefit of granting the license in the first place, i.e., bringing service to the public. These concerns are not applicable to auction winners who are already required to pay the government for their licenses.

The anti-trafficking rule should stay in place and be applied even to disaggregated license assignments.

2. Common Ownership Of Segments A & B. With one-half megahertz of spectrum, a 218-219 MHz Service licensee has several times the amount of spectrum of its closest counterpart, narrowband PCS. Narrowband PCS, like the 218-219 MHz service, is a narrowband wireless data service. Unlike cellular radiotelephone, MDS, or LMDS, neither the 218-219 MHz licensee nor the narrowband PCS licensee can offer broadband wireless data services like wireless Internet. The narrowband data licensees thus can effectively compete with the broadband licensees in the market for narrowband data services (which broadband licensees can also provide), but not in the market for broadband data services.

For these reasons, it is irrational to permit common ownership of Segments A & B in the 218-219 MHz service for the sake of competition. Even with a full one megahertz of spectrum, the 218-219 MHz Service cannot provide broadband services in competition with broadband licensees like cellular. Aggregation should be permitted for narrowband services that have less spectrum per license than the 218-219 MHz Service, which will make licensed narrowband services more competitive with each other. But for the fledgling 218-219 MHz Service, permitting common ownership of Segment A & B at this time would be a mistake. This service already suffers from the unfortunate mistake of having the top-9 markets lotteried and the lower tier markets auctioned, a situation that has stymied development of the service. Permitting common ownership of Segments A & B will only exacerbate the problem. If one licensee holds both frequency segments, it will hold an absolute veto over the deployment of any new 218-219 MHz equipment and services in its market. Equipment manufacturers and applications developers that are attempting deployments using the 218-219 MHz Service will have no second licensee to turn to if one party controls both frequency segments. The result will be to discourage the development of new applications and equipment in this band.

A 218-219 MHz Service licensee does not need 1 megahertz to compete effectively in the market for providing narrowband data services. In fact, it does not even need one-half megahertz of spectrum, as demonstrated by narrowband PCS. Indeed, Celtronix

believes narrowband services can be provided using 250 kilohertz of spectrum, which is why it supports permitting disaggregation of the 218-219 Mhz spectrum. Thus, while narrowband licensees having less than one-half megahertz of spectrum per license should be allowed to aggregate their licenses, it is premature to permit such aggregation in the 218-219 MHz Service because it will further discourage 218-219 MHz equipment and applications developers. Celtronix notes that commenters in the rulemaking proceeding who supported aggregation generally failed to cite any concrete facts or examples showing why one megahertz of spectrum is needed in order for them to be competitive. In any event, the waiver process could be used on a case-by-case basis if a party for some one reason requires both 218-219 MHz frequency segments.

3. Payment Issues. As you are aware, Celtronix is litigating two matters with the Commission concerning 218-219 MHz license payments. In one case, addressed in an application for review now before the Commission, Celtronix is part of a group that seeks a 25% refund of its winning license bid because it was a member of a class of non-preferred auction participants who did not receive a bidding preference subsequently acknowledged by the Commission as unconstitutional. In the second case, addressed in a separate application for review, Celtronix seeks invalidation of the Commission's new installment payment rules that eliminate a licensee's ability to request grace periods. The latter application for review has been pending for over 2 years and, prior to our meeting on June 17, Celtronix was preparing to pursue means for expediting resolution of the grace period issue. However, based on our meeting, we understand that the Commission's upcoming order in the 218-219 MHz proceeding will deal with the issues raised in both of Celtronix's applications for review, i.e., the bidding preference issue and the grace period issue and, therefore, Celtronix for the time being will not pursue means for expediting resolution of the grace period issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard S. Myers', with a long, sweeping horizontal line extending to the right.

Richard S. Myers, President
Celtronix Telemetry, Inc.

cc: FCC Secretary